IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 258 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
PITHABHAI D HARIJAN & 3 - Opponent(s)

==========

Appearance :
MS MS PANCHAL APP for Appellant(s) : 1,
MR MB PARIKH for Opponent(s) : 1,
NOTICE SERVED for Opponent(s) : 2,
MR HRIDAY BUCH for Opponent(s) : 3,
None for Opponent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 06.10.1990 passed by the learned

Judicial Magistrate, First Class, Kodinar in Criminal Case No.1111/1986 whereby, the appeal was dismissed and the respondents–accused were acquitted of the charges levelled against them.

2. The brief facts of the prosecution case are as under;

2.1 On 21.08.1986, as the house of the accused no.1 viz., Abdul Gafar Habibbhai Meman was in bad condition, it was kept for demolishing. During that process, one slab was fallen and as a result of that, Ratanben, Raniben and one boy, Bharatkumar Lakhamanbhai died on the spot. Accordingly, offence came to be registered for the offence under Sections 304(A), 337, 338 and 114 of the Indian Penal Code.

2.2 On the basis of complaint, the investigation was embarked upon. The Investigating Officer recorded the statements of various witnesses, drew the panchnama of scene of offence and arrested the accused persons. At the end of investigation, chargesheet was filed against the respondents-accused and the case was numbered as Criminal Case No.1111 of 1986 in the Court of Learned Judicial Magistrate, First Class, Kodinar on 20.11.1986.

2.3 As the accused denied the charges, the matter proceeded further. The Learned Magistrate has

examined as many as 18 witnesses viz., Prosecution Witness No.1 viz., Bhimabhai Sidibhai (Complainant) at Exh.10, Prosecution Witness No.2 viz., Dipuben Sidibhai at Exh.12, Prosecution Witness No.3 viz., Jashodaben Kalabhai at Exh.13, Prosecution Witness No.4 viz., Shantaben Shadulbhai at Exh.14, Prosecution Witness No.5 viz., Karshanbhai Devshibhai at Exh.15, Prosecution Witness No.6 viz., Kalabhai Pratapbhai at Exh.16, Prosecution Witness No.7 viz., Bhikhubhai Vijanand at Exh.17, Prosecution Witness No.8 viz., Karshanbhai Lakhamanbhai at Exh.20, Prosecution Witness No.9 viz., Raniben Govindbhai at Exh.22, Prosecution Witness No.10 viz., Kalubhai Miya Alam at Exh.24, Prosecution Witness No.11 viz., Variskhan Nathubhai at Exh.25, Prosecution Witness No.12 viz., Labhubhai Jivrajbhai at Exh.26, Prosecution Witness No.13 viz., B.D. Vaghela (Investigating Officer) at Exh.28, Prosecution Witness No.14 viz., Ramkrushna Asharam at Exh.38, Prosecution Witness No.15 viz., J.B. Bhatt at Exh.45, Prosecution Witness No.16 viz., Rasiklal Bavchandbhai at Exh.50, Prosecution Witness No.17 viz., Dr.B.P. Mokaliya at Exh.51 and Prosecution Witness 18 viz., Dr.A.K. Jain at Exh.53. The prosecution also relied upon several documentary evidence numbering 19.

2.4 At the end of trial, the learned Magistrate acquitted the respondents-accused of the charges levelled against them. Hence, this appeal.

3. At the time of admission of the appeal, leave was refused qua respondent no.4 and the appeal was admitted qua the respondent nos.1, 2 and 3.

4. Learned Additional Public Prosecutor, Ms.Panchal for the appellant has contended that the trial Court has committed an error in not believing the prosecution witnesses and has wrongly acquitted the accused of the charges levelled against him. She has also contended that the trial court ought to have believed the version of the prosecution witnesses who were present at the relevant point of time.

5. Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings

are against the weight of the evidence on record or, in other words, perverse.

6. In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with”.

[*Emphasis supplied*]

7. Similar principle has been reiterated by the

Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

8. After considering the entire oral as well as documentary evidence on record, the trial Court has come to a finding that the the complainant was not present at the time of incident and two crucial witnesses viz., Dipuben Sidibhai (P.W.No.2, Exh.12) and Jashodaben Kalabhai (P.W.No.3, Exh.13) have turned hostile. Keeping in mind the evidence on record, the trial Court has given finding that the respondent no.3 was not the owner of the house and nothing on record to show that the contract was given by the original accused no.4 and, therefore, the benefit of doubt was given by the trial Court and, therefore, the accused have been acquitted .

9. In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and

in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

10. It is also required to be noted that in the case of **State of Maharashtra V/s. M/s Gopalprasad Govindprasad Agarwal**, reported in **AIR 1999 SC 1507**, having regard to the fact that the offences were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 30th August, 1985 and almost 22 years have elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the trial court.

11. I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the

> narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

12. In the result, the appeal is dismissed.

Sd/-
(K.S.JHAVERI, J.)

/patil